

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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**PUBLIC SERVICE
COMMISSION**

IN THE MATTER OF:

THE JOINT APPLICATION OF ORCHARD GRASS
UTILITIES, INC. AND OLDHAM COUNTY SANITATION
DISTRICT FOR APPROVAL OF THE TRANSFER OF
WASTE WATER TREATMENT FACILITIES PURSUANT
TO STOCK PURCHASE AGREEMENT BETWEEN THE
PARTIES

CASE No. 2004-00029

**RESPONSE OF ORCHARD GRASS UTILITIES, INC., AND THE OLDHAM
COUNTY SANITATION DISTRICT TO MR. MADISON'S MOTION TO INTERVENE**

Come the Joint Applicants, Orchard Grass Utilities, Inc. ("Orchard Grass") and the Oldham County Sanitation District ("OCSD"), by counsel, and for their Response to the Motion to Intervene filed by and on behalf of Robert L. Madison, state as follows:

This case concerns the Joint Application filed by Orchard Grass and the OCSD requesting the Public Service Commission ("Commission") to approve the transfer of the water treatment facilities owned by Orchard Grass to the OCSD pursuant to a stock purchase agreement. Orchard Grass owns and operates the "Orchard Grass" wastewater treatment plant, which is the wastewater collection system served by the Orchard Grass wastewater treatment plant and the pump stations related thereto, as well as the "Willow Creek" wastewater treatment plant, which is the wastewater collection system served by the Willow Creek wastewater treatment plant and the pump station related thereto. Mr. Madison, a resident receiving service from the Willow Creek wastewater treatment plant, seeks to intervene in this case, claiming that he has a special interest in the proceeding that is not otherwise adequately represented. Orchard Grass and the

OCSD dispute that Mr. Madison's interests are not adequately represented, and respectfully request the Commission to deny Mr. Madison's request.

OCSD is a governmental entity that will own and operate the Orchard Grass sewer system and the Willow Creek sewer system. Both the Orchard Grass wastewater treatment plant and the Willow Creek wastewater treatment plant are located in Oldham County, Kentucky, although a certain number of the residences served by the Willow Creek wastewater treatment plant, including Mr. Madison's residence, are located in Jefferson County, Kentucky. Since the early 1970's, when the Willow Creek system was built, the regulation and administration of this system has been performed by the Kentucky Division of Water and by Oldham County. The Louisville and Jefferson County Health Department concurred in the exercise of jurisdiction by the Kentucky Division of Water and Oldham County since the Willow Creek waste water treatment plant was located in Oldham County. Furthermore, pursuant to KRS 220.280, the OCSD is authorized to make contracts or other arrangements to provide for the collection, disposal and treatment of sewage and other liquid wastes produced outside of Oldham County.

As a governmental entity and as set forth in the Joint Application, OCSD has the requisite financial, technical and managerial abilities to provide service to the wastewater customers of Orchard Grass, as well as the technical experience to do so. It is required to provide the service to its customers at a reasonable rate that shall be uniform throughout its jurisdiction pursuant to KRS 220.135(7)(b). Moreover, the Oldham County Fiscal Court has the power pursuant to KRS 220.035(1) and Oldham County Ordinance No. 96-830-26 to review, approve, amend or disapprove the established rates. Therefore, Mr. Madison's interests are fully protected, and there is no need to grant his motion to intervene.

In addition, Mr. Madison's interest is minimal at best. Willow Creek currently charges a flat rate of \$18.45 per month. Based upon his average water usage of 3,806 gallons a month, Mr. Madison's bill under the OCSD rate would increase 7.48% to \$19.83 per month, or a difference of only \$16.56 per year. Again, his interest is adequately protected and his request to intervene should be denied.

The OCSD, at the request and urging of the Kentucky Division of Water has taken steps to purchase the small wastewater treatment plants located in Oldham County, including the Orchard Grass system, and consolidate them into a larger, more efficient wastewater system. Certainly, from the perspective of the Kentucky Division of Water, OCSD's ownership and operation of Orchard Grass, which includes the Willow Creek wastewater system, will result in an improvement in the treatment of the wastewater generated by Willow Creek residents, as well as an improvement in the water quality of streams flowing through Oldham County.

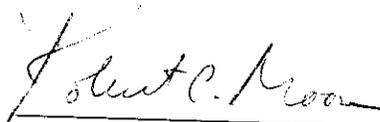
Mr. Madison's Motion to Intervene appears to be based primarily on a concern that a variable rate will be imposed on the customers of OCSD, instead of the flat rate currently imposed by Orchard Grass. As described above, the impact of the variable rate on Mr. Madison will be minimal. Furthermore, the variable rate ensures that the customers of OCSD are treated equitably in that the customers that use a large amount of water are charged more than the customers that use a small amount of water. Variable rates are charged by a number of the public wastewater treatment operators in the Jefferson County/Oldham County area. The imposition of an equitable variable rate should not be a basis for the granting of the Motion to Intervene. This is particularly true where the Commission itself sought to encourage privately owned waste water treatment plants to charge its customers using a variable rate, but had to abandon this effort

because of the small size of many of the operations, making the use of a variable rate inefficient.

Finally, the Kentucky Attorney General has recently filed a Motion to Intervene in this case, and the Attorney General's participation in this matter will ensure that Mr. Madison's interests are fully protected. There simply is no need to grant his Motion to Intervene.

Alternatively, should the Commission grant Mr. Madison's Motion to Intervene and provide for the service of information requests upon the parties to this proceeding, Orchard Grass and OCSD request that the Commission set a procedural schedule requiring the submission of information requests with seven (7) days of the grant of the Motion to Intervene and granting Orchard Grass, the OCSD and the intervenors ten (10) days within which to respond to the requests for information. This will allow the parties sufficient time to file information requests and to respond to same, and will enable the Commission to make a timely decision in this matter.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, on Robert L. Madison, 5407 Baywood Drive, Louisville, Ky., 40241-1318, and David Edward Spenard, Assistant Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Ky., 40601-8204 on this the 18th day of February, 2004.


Robert C. Moore